COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.296 of 2001
(Old No. 229 of 2000)

M/s Hughes Services (Far East) Pvt. Ltd.
as Agent of Mr. Murray W.J.

... Appellant

Versus

The Commissioner of Income Tax, Meerut

... Respondent

Mr. V.K. Bist, Advocate for the appellant.
Mr. S.K. Posti, Advocate for the respondent.

Dated: December 7, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the consolidated order dated 05.05.2000 for the assessment year 1992-93, passed by the Income Tax Appellate Tribunal, (Bench 'C' New Delhi).

3. Brief facts of the case-giving rise to this appeal are that appellant is a non-resident company incorporated in Singapore. It had entered into a contract with O.N.G.C. for cementing services on offshore and onshore rigs. It had employed expatriate personnel of various nationalities. For execution of work, these employees were required to be on Board the rig, all the time for 28 days at a stretch and then were 28 days off, when they were outside India. This was a continuous process. The assessee was providing these employees the free

boarding and lodging on board the rig. The Assessing Officer taxed the off-period salary and treated the provision of free boarding and lodging to be perquisite. The interest under Section 234-B for default in payment of advance tax was also leved. In the appeal, the Commissioner of Income Tax (Appeals), Dehradun as well as the Income Tax Appellate Tribunal, Delhi partly allowed the appeal.

4. The question of law framed in the memo of appeal for our determination is as follows: -

> ***"Whether on the facts and in the circumstances of the case, Tribunal is legally justified in treating the amount paid for the off period as the income earned in India in view of the explanation to Section 9(1)(ii) while admittedly no service has been rendered during off period in India and inasmuch as, the subsequent amendment made in the explanation w.e.f. 01.04.2000 shows that the amount paid for off period or leave period is regarded as the income accrued in India only w.e.f. 01.04.2000"?***

5. An identical question was answered by the Division Bench of this Court in the favour of the Revenue in the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. reported in (2003) 264 ITR 320.* The Special Leave Petition was filed against the judgment by the Sedco Forest International Drilling Co. Ltd., which was converted into Civil Appeal Nos.351-355 of 2005. The Hon'ble Apex court in **"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639"** has held that since the Explanation to Section 9(1)(ii) of the Income Tax Act, 1961 was amended by the Finance Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and accordingly the judgment of Division

Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court **"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).**

7. Accordingly, the appeal is allowed. The question is answered accordingly. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang